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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/696,846

10/31/2003

Farid Bruce Khalili

VER2226-005

8064

8698 7590 04/27/2009

STANDLEY LAW GROUP LLP

6300 Riverside Drive

Dublin, OH 43017

EXAMINER

PELLEGRINO, BRIAN E

ART UNIT

PAPER NUMBER

3738

MAIL DATE

DELIVERY MODE

04/27/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/696,846	<b>Applicant(s)</b> KHALILI, FARID BRUCE	
	<b>Examiner</b> Brian E. Pellegrino	<b>Art Unit</b> 3738	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 19 January 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 2-5, 8-10 and 17-19 is/are pending in the application.
- 4a) Of the above claim(s) 4 and 5 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2, 3, 8-10 and 17-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

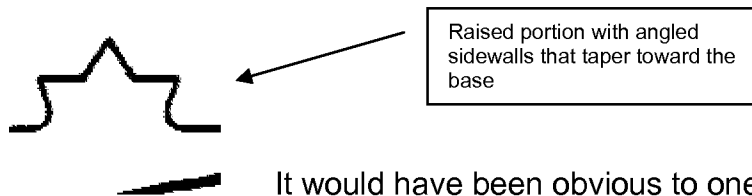
- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 2,3,8,9,17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mazda (WO 94/04100) in view of Cohen et al. (6454806). Mazda shows (Fig. 5) a spinal implant with a first base component **25**, a second base component **26**, and a middle component **22** having a convex side **9**. The first base component having a second side that comprises a concave portion **12** with a constant radius to engage the convex surface of the middle component. As seen in Fig. 5, there are a plurality of sharpened teeth **17** and are positioned on each side of the top and bottom components for **engaging** vertebrae. However, Mazda fails to disclose the surface for engaging vertebrae includes a raised portion with angled sidewalls that taper in the direction towards the base component. Cohen et al. teach (Figs. 16,17B) that the vertebral engaging surface of the implant includes a raised portion on the top and bottom surfaces of the base components **100** of a spinal implant and has angled sidewalls that taper in the direction towards the base component. See illustration:



It would have been obvious to one of ordinary skill in the art to incorporate the raised portion as taught by Cohen et al. with the spinal

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implant of Mazda since it would raise the teeth and cooperate with bone in-growth and enhance the stabilization and give a stronger secured base component by giving space between the raised portions. Regarding claim 8, it can be seen the middle component is removably or slidably received in slot **28** such that the convex portion extends above the “generally” flat portion of the inner second side of the second base component. It can be construed that grooves in the plates for the screw in teeth lie below the flat surface and surround the convex component. With respect to claim 9, it can be seen in Fig. 2 of Mazda that the center of the middle component is closer to one edge than the other. Regarding claim 18, Fig. 6 of Mazda show the teeth are positioned near the periphery and also some teeth are positioned in the *central* area that extends between the two ends. Thus, by incorporating raised portions as taught by Cohen et al. with the teeth of Mazda, there would then be raised portions in the central area. With respect to claim 19, it is noted that Mazda illustrates (Fig. 6) that the teeth have circular cross-sections. Thus, in modifying with Cohen, the raised portion has two sections, thus a pair of concentric raised circular **portions**.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mazda (WO 94/04100) in view of Cohen et al. '806 as applied to claim 17 above, and further in view of Khandkar et al. (2004/133281). Mazda is explained above. However, Mazda fails to disclose the middle component varies in height from posterior to anterior edges. Khandkar et al. teach (Fig. 8) that middle component **42** varies in height from posterior to anterior edges to provide limited amount of axial rotation and translation, Paragraph 73. It would have been obvious to one

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of ordinary skill in the art to modify the middle component to be varied in height as taught by Khandkar et al. in the spinal implant of Mazda modified with Cohen et al. such that it limits movement in a patient that can only have limited motion.

### ***Response to Arguments***

Applicant's arguments with respect to claim 17 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian E. Pellegrino whose telephone number is 571-272-4756. The examiner can normally be reached on M- F (9am-5:30pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on 571-272-4754. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

TC 3700  
/Brian E Pellegrino/  
Primary Examiner, Art Unit 3738